

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

984L0311

CONFERENCE COMMITTEE ENGROSSED NO. **SB** **67** - 03/04/2005

Introduced by: Senator Schoenbeck and Representatives Hennies, Cutler, O'Brien, Rave, and Rounds at the request of the Criminal Code Revision Commission

1 FOR AN ACT ENTITLED, An Act to revise certain drug and alcohol offenses, driving
2 offenses, and other felonious offenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. No person may drive or be in actual physical control of any vehicle while:

6 (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown
7 by chemical analysis of that person's breath, blood, or other bodily substance;

8 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
9 substance not obtained pursuant to a valid prescription, or any combination of an
10 alcoholic beverage, marijuana, or such controlled drug or substance;

11 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained
12 pursuant to a valid prescription, or any other substance, to a degree which renders the
13 person incapable of safely driving; ~~or~~

14 (4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any



1 controlled drug or substance obtained pursuant to a valid prescription, or any other
2 substance, to a degree which renders the person incapable of safely driving; or

3 (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the
4 body as prohibited by § 22-42-15.

5 Section 2. That § 32-23-1.1 be amended to read as follows:

6 32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation
7 of the provisions of § 32-23-1 when ~~he~~ the officer has probable cause to believe that the person
8 to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-
9 1 and that such violation occurred prior to or immediately following such traffic accident.

10 Section 3. That § 32-23-1.2 be amended to read as follows:

11 32-23-1.2. Every person operating a ~~motor~~ vehicle which has been involved in an accident
12 or which is operated in violation of any of the provisions of this chapter shall, at the request of
13 a law enforcement officer, submit to a breath test to be administered by such officer. If such test
14 indicates that such operator has consumed alcohol, the law enforcement officer may require such
15 operator to submit to a chemical test in the manner set forth in this chapter.

16 Section 4. That § 32-23-1.3 be repealed.

17 ~~—32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle~~
18 ~~while the weight of alcohol in the blood of the arrested person is 0.08 percent or greater, shall~~
19 ~~be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if the~~
20 ~~prosecuting attorney states the reasons for reduction or dismissal in writing and on the record~~
21 ~~and files the reasons with the clerk of courts.~~

22 Section 5. That § 32-23-2 be amended to read as follows:

23 32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty
24 of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less

1 than thirty days. However, the court may in its discretion issue an order upon proof of financial
2 responsibility, pursuant to § 32-35-113, permitting the person to operate a ~~motor~~ vehicle for
3 purposes of ~~the person's~~ employment, attendance at school, or attendance at ~~court-ordered~~
4 counseling programs ~~during the hours of the day and the days of the week as set forth in the~~
5 ~~order~~. The court may also order the revocation of the defendant's driving privilege for a further
6 period not to exceed one year or restrict the privilege in such manner as it sees fit for a period
7 not to exceed one year.

8 Section 6. That § 32-23-2.1 be amended to read as follows:

9 32-23-2.1. Any person convicted of a first offense pursuant to ~~§ 32-23-2~~ § 32-23-1 with a
10 0.17 percent or more by weight of alcohol in ~~his~~ the person's blood shall, in addition to the
11 penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine
12 if the defendant ~~has an addiction to alcohol~~ is chemically dependent. The cost of such evaluation
13 shall be paid by the defendant.

14 Section 7. That § 32-23-3 be amended to read as follows:

15 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is
16 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally
17 revoke the defendant's driving privilege for a period of not less than one year. However, upon
18 the successful completion of a court-approved ~~alcohol treatment~~ chemical dependency
19 counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may
20 permit the person to drive for the ~~purpose~~ purposes of employment ~~and may restrict the privilege~~
21 ~~by the imposition of such conditions as the court sees fit. If such person is convicted of driving~~
22 ~~without a license during that period, the person shall be sentenced to the county jail for not less~~
23 ~~than three days, which sentence may not be suspended,~~ attendance at school, or attendance at
24 counseling programs.

Section 8. That § 32-23-4 be amended to read as follows:

32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than one year from the date sentence is imposed or one year from the date of discharge from incarceration, whichever is later. ~~If the person is convicted of driving without a license during that period, he shall be sentenced to the county jail for not less than ten days, which sentence may not be suspended.~~ Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 9. That § 32-23-4.3 be amended to read as follows:

32-23-4.3. The plea and election of method of trial by the accused shall be first taken only on the first part of the information described in § 32-23-4.2 but before a plea is made the accused shall be informed by the judge, in absence of the jury, of the contents of ~~his~~ the second part. There shall be entered in the minutes of the court the time and place when and where the judge so informed the accused, and like entry thereof shall be made in the judgment.

Section 10. That § 32-23-4.4 be amended to read as follows:

32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon proceeded with, and until such time no information as to the second part of the information ~~shall~~ may be divulged to the jury. If the accused ~~shall have elected~~ elects a jury trial in the second part

1 of the information, such trial may be had to the same or another jury as the court may direct.

2 Section 11. That § 32-23-4.6 be amended to read as follows:

3 32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense, or subsequent
4 offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4,
5 the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall
6 unconditionally revoke the defendant's driving privileges for such period of time as may be
7 determined by the court, but in no event less than two years from the date sentence is imposed
8 or two years from the date of discharge from incarceration, whichever is later. ~~If the person is~~
9 ~~convicted of driving without a license during that period, he shall be sentenced to the county jail~~
10 ~~for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-~~
11 ~~19, the court retains jurisdiction to modify the conditions of the license revocation for the term~~
12 ~~of such revocation. Upon the successful completion of a court-approved chemical dependency~~
13 ~~counseling program, and proof of financial responsibility pursuant to § 32-35-43.1, the court~~
14 ~~may permit the person to operate a vehicle for the purposes of employment, attendance at~~
15 ~~school, or attendance at counseling programs.~~

16 Section 12. That § 32-23-6 be amended to read as follows:

17 32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been
18 ~~entitled to use~~ prescribed a drug under the laws of this state ~~shall~~ is not ~~constitute~~
19 against any charge of violating ~~said section~~ § 32-23-1.

20 Section 13. That § 32-23-7 be amended to read as follows:

21 32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle
22 while under the influence of ~~intoxicating liquor~~ an alcoholic beverage, a violation of § 22-16-41,
23 or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged
24 as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives

rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it is presumed that the defendant was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage;
- (2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
- (3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, it is presumed that the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

Section 14. That § 32-23-8 be amended to read as follows:

32-23-8. The provisions of § 32-23-7 ~~shall~~ may not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

Section 15.

Section 16. That § 32-23-10 be amended to read as follows:

32-23-10. Any person who operates any vehicle in this state is considered to have given consent to the withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance to determine the amount of alcohol in the person's blood and to determine the presence of marijuana or any controlled drug or substance

or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15
or any other substance that may render a person incapable of safely driving.

The person shall be requested by the officer to submit to the withdrawal of blood or other
bodily substance for chemical analysis or chemical analysis of the person's breath and shall be
advised by the officer that:

(1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal
or chemical analysis may be required unless the person has been arrested for a third,
fourth, or subsequent violation of § 32-23-1, constituting a felony offense under
§ 32-23-4 or 32-23-4.6; has been arrested for vehicular homicide under § 22-16-41
or vehicular battery under § 22-16-42; or has been involved in an accident resulting
in death or serious bodily injury of another person;

(2) If the person refuses to submit to the withdrawal or chemical analysis, the person's
driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the
person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation
order being issued; and

(3) The person has the right to have a chemical analysis performed by a technician of the
person's own choosing at the person's own expense, in addition to the test requested
by the officer.

Section 17.

Section 18.

Section 19.

Section 20.

Section 21.

Section 22. That § 32-23-14 be amended to read as follows:

32-23-14. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician, or medical technologist may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath or other bodily substance specimen. ~~Such~~ Any such authorized ~~persons~~ person, acting on the presumption of consent, ~~and~~ or any hospital employing any such persons, are person, is not liable and may not be held to pay damages to the party from whom the blood sample is withdrawn, if the withdrawal is administered with usual and ordinary care.

Section 23. That § 32-23-15 be amended to read as follows:

32-23-15. The person tested pursuant to ~~§§ 32-23-13 and 32-23-14 shall be permitted to~~ § 32-23-10 may have a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist of ~~his~~ the person's own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.

Section 24. That § 32-23-16 be amended to read as follows:

32-23-16. Upon the request of the person who was tested pursuant to ~~§§ 32-23-13 and 32-23-14~~ § 32-23-10, or upon the request of ~~his~~ the person's attorney, the results of such analysis shall be made available to ~~him~~ the person or to ~~his~~ the person's attorney.

Section 25.

Section 26.

Section 27.

Section 28.

Section 29. That § 32-12A-46 be amended to read as follows:

32-12A-46. Any person who operates any commercial motor vehicle in this state is considered to have given consent to the withdrawal of blood or other bodily substance to

determine the amount of alcohol in that person's blood, or to determine the presence of any controlled drug or substance or marijuana or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely driving. The chemical analysis shall be administered at the direction of a law enforcement officer who after stopping or detaining the commercial motor vehicle driver has probable cause to believe that the driver was driving or in actual physical control of a commercial motor vehicle while having any alcohol or drugs in that person's system. Any person requested by a law enforcement officer under this section to submit to a chemical analysis shall be advised by the officer that:

- (1) If the person refuses to submit to the chemical analysis, none shall be given; and
- (2) If the person refuses to submit to the chemical analysis the person shall be immediately placed out of service for a period of twenty-four hours and be disqualified from operating a commercial motor vehicle for a period of not less than one year; or
- (3) If the person submits to a chemical analysis which discloses that the person was operating the commercial motor vehicle while there was 0.04 percent or more by weight of alcohol in that person's blood the person shall be disqualified from operating a commercial motor vehicle for not less than one year.

Section 30. That § 32-12A-36 be amended to read as follows:

32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year:

- (1) If convicted of a first violation of driving or being in actual physical control of a commercial motor vehicle while under the influence of alcohol, ~~or~~ marijuana, any controlled drug or substance, or any other substance that may render a person

1 incapable of safely driving, in violation of § 32-23-1;

2 (2) If convicted of a first violation of driving or being in actual physical control of a
3 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol
4 in that person's blood as shown by chemical analysis of that person's breath, blood,
5 or other bodily substance, in violation of § 32-12A-44;

6 (3) If convicted of a first violation of leaving the scene of an accident while operating a
7 commercial motor vehicle, in violation of § 32-34-5 or 32-34-6;

8 (4) If convicted of a first violation of using a commercial motor vehicle in the
9 commission of any felony other than a felony described in § 32-12A-38; or

10 (5) For refusing to submit to a chemical analysis for purposes of determining the amount
11 of alcohol in that person's blood while driving a commercial motor vehicle in
12 violation of § 32-23-11, 32-12A-43, or 32-12A-46.

13 If any of these violations or refusal occurred while transporting hazardous material required
14 to be placarded, the person is disqualified for a period of not less than three years.

15 Section 31. That § 32-12A-43 be amended to read as follows:

16 32-12A-43. Notwithstanding any other provision of §§ 32-12A-1 to ~~32-12A-50, inclusive,~~
17 ~~32-12A-51, and 32-12A-52 to~~ 32-12A-58, inclusive, no person may drive, operate, or be in
18 actual physical control of a commercial motor vehicle within this state while having any
19 measurable or detectable amount of alcohol in that person's system. A person who drives,
20 operates, or is in actual physical control of a commercial motor vehicle within this state while
21 having any measurable or detectable amount of alcohol in that person's system or who refuses
22 to submit to an alcohol test under § 32-12A-46, shall be placed out of service for twenty-four
23 hours.

24 Section 32. That § 32-20A-14 be amended to read as follows:

1 32-20A-14. The operator of a snowmobile ~~shall be~~ is deemed the driver or operator of a
2 ~~motor~~ vehicle within the meaning of chapter 32-23 and is subject to all the provisions of chapter
3 32-23 relating to driving while under the influence of intoxicating liquor, drugs, or otherwise
4 ~~therein provided~~ and is punishable ~~thereunder~~ under chapter 32-23 for any violation of that
5 chapter.

6 Section 33. That chapter 42-8 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The operator of a boat is deemed the driver or operator of a vehicle within the meaning of
9 chapter 32-23 and is subject to all the provisions of chapter 32-23 relating to driving while under
10 the influence and is punishable under chapter 32-23 for any violation of that chapter.

11 Section 34. That § 42-8-45 be repealed.

12 ~~42-8-45. No person may operate a boat while underway on the public waters of the state~~
13 ~~while:~~

14 ~~(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown~~
15 ~~by chemical analysis of that person's breath, blood, or other bodily substance;~~

16 ~~(2) Under the influence of an alcoholic beverage;~~

17 ~~(3) Under the influence of marijuana or any controlled drug or substance to a degree~~
18 ~~which renders the person incapable of safely driving or operating such boat; or~~

19 ~~(4) Under the combined influence of an alcoholic beverage and marijuana or any~~
20 ~~controlled drug or substance to a degree which renders the person incapable of safely~~
21 ~~driving or operating such boat.~~

22 ~~Any violation of this section is a Class 1 misdemeanor.~~

23 Section 35. That § 42-8-45.1 be repealed.

24 ~~42-8-45.1. A law enforcement officer may, without a warrant, arrest a person for a violation~~

1 of the provisions of § 42-8-45 if he has probable cause to believe that the person to be arrested
2 has been involved in an accident on the public waters of the state and has violated the provisions
3 of § 42-8-45 and that the violation occurred prior to or immediately following the accident.

4 Section 36. That § 42-8-45.2 be repealed.

5 ~~—42-8-45.2. Any person operating a boat while underway on the public waters of the state~~
6 ~~which has been involved in an accident or which is operated in violation of any of the provisions~~
7 ~~of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be~~
8 ~~administered by the officer. If the test indicates that the person has consumed alcohol, the law~~
9 ~~enforcement officer may require the person to submit to a chemical test in the manner set forth~~
10 ~~in this chapter.~~

11 Section 37. That § 42-8-45.3 be repealed.

12 ~~—42-8-45.3. The fact that any person charged with a violation of § 42-8-45 may use a drug~~
13 ~~under the laws of this state does not constitute a defense against any charge of violating that~~
14 ~~section.~~

15 Section 38. That § 42-8-45.4 be repealed.

16 ~~—42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol~~
17 ~~in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's~~
18 ~~blood, breath, or other bodily substance gives rise to the following presumptions:~~

19 ~~—(1)— If there was at that time five hundredths percent or less by weight of alcohol in the~~
20 ~~defendant's blood, it is presumed that the defendant was not under the influence of~~
21 ~~intoxicating liquor;~~

22 ~~—(2)— If there was at that time in excess of five hundredths percent but less than eight~~
23 ~~hundredths percent by weight of alcohol in the defendant's blood, such fact does not~~
24 ~~give rise to any presumption that the defendant was or was not under the influence~~

1 ~~of intoxicating liquor, but such fact may be considered with other competent~~
2 ~~evidence in determining the guilt or innocence of the defendant;~~

3 ~~—(3)— If there was at that time eight hundredths percent or more by weight of alcohol in the~~
4 ~~defendant's blood, it is presumed that the defendant was under the influence of~~
5 ~~intoxicating liquor.~~

6 ~~—Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0~~
7 ~~cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.~~

8 Section 39. That § 42-8-45.5 be repealed.

9 ~~—42-8-45.5. The provisions of § 42-8-45.4 may not be construed as limiting the introduction~~
10 ~~of any other competent evidence bearing upon the question whether or not the defendant was~~
11 ~~under the influence of intoxicating liquor.~~

12 Section 40. That § 42-8-45.6 be repealed.

13 ~~—42-8-45.6. Any person who operates a boat while underway on the public waters of the state~~
14 ~~in this state is considered to have consented to the withdrawal of blood or other bodily substance~~
15 ~~and chemical analysis of such blood, breath, or other bodily substance to determine the amount~~
16 ~~of alcohol in such blood and to determine the presence of marijuana or any controlled drug or~~
17 ~~substance.~~

18 ~~—The person, operating a boat underway which has been involved in a collision or an accident~~
19 ~~resulting in bodily injury or death to any person or property damage to a boat or other property~~
20 ~~to an apparent extent of one thousand dollars or more to any one person's property or two~~
21 ~~thousand dollars or more in any one accident, shall submit to the withdrawal of blood or other~~
22 ~~bodily substance for chemical analysis or chemical analysis of the person's breath. The officer~~
23 ~~shall advise the person of the right to have an additional chemical analysis performed by a~~
24 ~~technician of his or her own choosing at his or her own expense.~~

~~Any other person, operating a boat underway which has not been involved in a collision or an accident resulting in bodily injury or death to any person or property damage to a boat or other property to an apparent extent of one thousand dollars or more to any one person's property or two thousand dollars or more in any one accident, shall be requested by the officer to submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical analysis of his or her breath. The officer shall advise the person that:~~

~~(1) If he or she refuses to submit to the withdrawal or chemical analysis, no withdrawal or chemical analysis may be required;~~

~~(2) Such refusal is admissible into evidence at trial; and~~

~~(3) That he or she has the right to have an additional chemical analysis performed by a technician of his or her own choosing at his or her own expense.~~

~~If such person refuses to submit to chemical analysis of his or her blood, urine, breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical analysis as provided in this section, and that person subsequently stands trial for violation of § 42-8-45, such refusal is admissible into evidence at the trial.~~

Section 41. That § 42-8-45.7 be repealed.

~~42-8-45.7. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician, or medical technologist may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath or other bodily substance specimen. Such authorized persons, acting on the consent considered to have been given by the person when operating a boat while underway, and any hospital employing such persons, are not liable and may not be held to pay damages to the party from whom the blood sample is withdrawn, if the withdrawal is administered with usual and ordinary care.~~

Section 42. That § 42-8-45.8 be repealed.

~~42-8-45.8. To be considered valid under the provisions of this chapter, the withdrawal or chemical analysis shall be performed at the direction of a law enforcement officer having lawfully arrested the person for violation of § 42-8-45 and the chemical test analysis of the person's breath, if one is performed, shall have been performed according to methods approved by the director of laboratories and by an individual possessing a valid permit issued by the director of laboratories for this purpose. The director of laboratories may approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct such analysis and issue permits which are subject to termination or revocation at the discretion of the director of laboratories.~~

Section 43. That § 42-8-45.9 be repealed.

~~42-8-45.9. The person tested pursuant to this chapter shall be permitted to have a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist of his own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.~~

Section 44. That § 42-8-45.10 be repealed.

~~42-8-45.10. Upon the request of the person who was tested pursuant to this chapter or upon the request of his attorney, the results of such analysis shall be made available to him or to his attorney.~~

Section 45. That § 42-8-45.11 be repealed.

~~42-8-45.11. In the case of a conviction under this chapter, the costs accrued for the withdrawal and chemical analysis of blood or other bodily substance and witness fees and expenses in connection therewith, shall be taxed by the court as costs in the action and shall, if the county is to have a lien for fees paid to counsel for an indigent, be included in the lien filed;~~

1 ~~otherwise it shall, with other costs as the court imposes, be entered in the judgment as provided~~
2 ~~in chapter 23A-27.~~

3 Section 46. That § 13-32-9 be amended to read as follows:

4 13-32-9. Any person adjudicated, convicted, the subject of a youth diversion program, or
5 the subject of a suspended imposition of sentence for possession, use, or distribution of
6 controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting,
7 inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is
8 ineligible to participate in any extracurricular activity at any secondary school accredited by the
9 Department of Education for one calendar year from the date of adjudication, conviction,
10 placement in a youth diversion program, or suspended imposition of sentence. The one-year
11 suspension may be reduced to sixty school days if the person participates in an assessment with
12 a certified chemical dependency counselor and completes any recommended accredited
13 intensive prevention or treatment program. If the assessment indicates the need for a higher level
14 of care, the student is required to complete the prescribed program before becoming eligible to
15 participate in extracurricular activities. Upon a subsequent adjudication, conviction, or
16 suspended imposition of sentence for possession, use, or distribution of controlled drugs or
17 substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise
18 taking into the body any substances as prohibited by § 22-42-15, by a court of competent
19 jurisdiction, that person is ineligible to participate in any extracurricular activity while that
20 person is attending any secondary school accredited by the Department of Education. Upon such
21 a determination in any juvenile proceeding the Unified Judicial System shall give notice of that
22 determination to the South Dakota High School Activities Association and the chief
23 administrator of the school in which the person is enrolled.

24 As used in this section, the term, extracurricular activity, means any activity sanctioned by

1 the South Dakota High School Activities Association. Upon placement of the person in a youth
2 diversion program, the state's attorney who placed the person in that program shall give notice
3 of that placement to the South Dakota High School Activities Association and chief
4 administrator of the school in which the person is enrolled.

5 Section 47. That § 35-10-17 be amended to read as follows:

6 35-10-17. Any structure, conveyance, or place where alcoholic beverages are manufactured,
7 sold, kept, bartered, given away, found, consumed, or used in violation of the laws of the state,
8 relating to alcoholic beverages, and ~~all~~ any alcoholic beverages beverage and any property kept
9 and used in maintaining the same, is hereby declared to be a common nuisance, and any person
10 who knowingly maintains such a common nuisance is guilty of a Class 1 misdemeanor. A single
11 instance of manufacturing, selling, keeping, bartering, giving away, finding, consuming, or
12 using alcoholic beverages in violation of the laws of this section is a Class 2 misdemeanor.

13 Section 48. That § 35-9-1.3 be amended to read as follows:

14 35-9-1.3. No person may be convicted of illegally selling any alcoholic beverage to any
15 underage person pursuant to § 35-9-1 or 35-9-1.1, if the underage person was in possession of,
16 and the seller relied upon, any false age-bearing identification document that was furnished to
17 the underage person by any state agency or local law enforcement agency or any agent,
18 employee, contractor, or associate of any state agency or local law enforcement agency for the
19 purpose of attempting to illegally purchase any alcoholic beverage.

20 Section 49. That § 35-9-2 be amended to read as follows:

21 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to
22 purchase, attempt to purchase, ~~or~~ possess, or consume alcoholic beverages except when
23 consumed in a religious ceremony and given to ~~said~~ that person by an authorized person, ~~or~~ It
24 is a Class 2 misdemeanor for any person under the age of twenty-one to misrepresent his the

1 person's age with the use of any document for the purpose of purchasing or attempting to
2 purchase alcoholic beverages from any licensee licensed under this title.

3 Section 50. That § 35-9-2.3 be repealed.

4 ~~— 35-9-2.3. Except as provided in §§ 35-9-1 and 35-9-1.1, it is a Class 1 misdemeanor for any~~
5 ~~person twenty-one years of age or older to purchase or otherwise acquire alcoholic beverages~~
6 ~~from a retail establishment and to give or resell the alcoholic beverages to any person under the~~
7 ~~age of twenty-one years.~~

8 Section 51. That § 35-9-4.1 be repealed.

9 ~~— 35-9-4.1. The South Dakota Legislature enacts chapter 261 of the 1987 Session Laws to~~
10 ~~raise the state's minimum drinking age to twenty-one years of age solely under the duress of a~~
11 ~~funding sanction imposed by the United States Department of Transportation under 23 U.S.C~~
12 ~~§ 158. The Legislature strongly objects to being forced to choose between loss of highway~~
13 ~~construction funds, which are badly needed to construct priority road projects to promote the~~
14 ~~public health and safety of the state's inhabitants and visitors, and loss of its right to set its own~~
15 ~~drinking age. The action taken by this Legislature shall not be construed as a concession or~~
16 ~~waiver of its constitutional right to establish at what age an individual may lawfully purchase,~~
17 ~~possess, and consume alcoholic beverages. Rather, it is taken to ensure that South Dakota is not~~
18 ~~penalized while it challenges in the United States Supreme Court the federal government's~~
19 ~~attempt to usurp the state's right to regulate the drinking age of its citizens. This legislation is~~
20 ~~enacted with the expressed intent of providing the South Dakota attorney general the maximum~~
21 ~~flexibility to pursue South Dakota's challenge to the federal government's intrusion into a right~~
22 ~~reserved to the state while ensuring the full availability of federal highway funds for the 1988~~
23 ~~construction season. It is the intent of this Legislature that if at any time before or after the~~
24 ~~effective date of this legislation the provisions of 23 U.S.C § 158 are repealed, expired or~~

1 ~~declared invalid by the United States Supreme Court, the provisions of this legislation shall~~
2 ~~become null and void and any provision repealed by SL 1987, ch 261 shall be revived pursuant~~
3 ~~to § 2-14-19.~~

4 Section 52. That § 35-9-7 be amended to read as follows:

5 35-9-7. ~~If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a first~~
6 ~~offense, the court shall, in addition to any other penalty allowed by law, order the suspension~~
7 ~~of the person's driving privileges for a period not less than thirty days and not to exceed one~~
8 ~~year. However, the court may issue an order permitting the person to operate a motor vehicle~~
9 ~~for purposes of the person's employment or attendance at school or to court-ordered counseling~~
10 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~
11 ~~may also restrict the privilege in some other manner as the court may see fit for a period not to~~
12 ~~exceed one year.~~

13 ~~—If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a second or~~
14 ~~subsequent offense, the court shall, in addition to any other penalty allowed by law, order the~~
15 ~~suspension of the person's driving privileges for a period not less than sixty days and not to~~
16 ~~exceed one year~~ thirty days. However, the court may issue an order, upon proof of financial
17 responsibility pursuant to § 32-35-113, permitting the person to operate a ~~motor~~ vehicle for
18 purposes of the person's employment ~~or,~~ attendance at school, ~~or to court-ordered~~ attendance
19 at counseling programs ~~during the hours of the day and the days of the week set forth in the~~
20 ~~order. The court may also restrict the privilege in some other manner as the court may see fit for~~
21 ~~a period not to exceed one year.~~

22 Section 53. That § 35-9-8 be repealed.

23 ~~—35-9-8. If the conviction or adjudication for a violation of § 35-9-1 is for a first offense, the~~
24 ~~court shall, in addition to any other penalty allowed by law, order the revocation of the~~

1 ~~defendant's driving privileges for a period not less than thirty days and not to exceed one year.~~
2 ~~However, the court may issue an order permitting the person to operate a motor vehicle for~~
3 ~~purposes of the person's employment or attendance at school or to court-ordered counseling~~
4 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~
5 ~~may also restrict the privilege in such manner as it sees fit for a period not to exceed one year.~~
6 ~~— If the conviction or adjudication for a violation of § 35-9-1 is for a second or subsequent~~
7 ~~offense, the court shall, in addition to any other penalty allowed by law, order the revocation of~~
8 ~~the defendant's driving privileges for a period not less than sixty days and not to exceed one~~
9 ~~year.~~

10 Section 54. That § 32-12-52.3 be amended to read as follows:

11 32-12-52.3. Upon a first conviction or a first adjudication of delinquency for a any violation,
12 while in a ~~motor~~ vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9, inclusive, 22-42A-3, or 22-42A-4,
13 the court shall revoke the driver license or driving privilege of the ~~person~~ driver so convicted
14 for a period of ~~one hundred eighty~~ thirty days.

15 Upon a second conviction or a second adjudication of delinquency for any violation, while
16 in a vehicle, of §§ 22-42-5 to 22-42-9, inclusive, 22-42A-3, or 22-42A-4, the court shall, if such
17 second conviction or adjudication occurred within four years of the first conviction or
18 adjudication, revoke the driver license or driving privilege of the driver so convicted for a period
19 of one hundred eighty days.

20 Upon a ~~second~~ third or subsequent conviction or a ~~second~~ third or subsequent adjudication
21 of delinquency for a violation, while in a ~~motor~~ vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9,
22 inclusive, 22-42A-3, or 22-42A-4, the court shall, if such third or subsequent conviction or
23 adjudication occurred within four years of the previous conviction or adjudication, revoke the
24 driver license or driving privilege of the ~~person~~ driver so convicted for a period of one year or

1 until the person's seventeenth birthday, whichever is a longer period of time. For any offense
2 under this section, the court may issue an order, upon proof of financial responsibility pursuant
3 to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for purposes of the person's
4 employment, attendance at school, or counseling programs. Notwithstanding the provisions of
5 chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified Judicial System shall notify the
6 Department of Public Safety of any conviction or adjudication of delinquency for a violation,
7 while in a ~~motor~~ vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9, inclusive, 22-42A-3, or 22-42A-4.
8 The period of revocation shall begin on the date the person's revoked driver license is received
9 by the court or the department. At the expiration of the revocation period, a person may make
10 application as provided by law and shall pay the license fee prescribed in § 32-12-47.1.

11 Section 55. That § 32-12-52.4 be amended to read as follows:

12 32-12-52.4. Upon a first conviction or a first adjudication as a child in need of supervision
13 for a violation of § 35-9-2 while in a ~~motor~~ vehicle, the court shall suspend the driver license
14 or driving privilege of ~~any the driver of a vehicle who~~, if the driver was under the age of
15 twenty-one when the offense occurred, for a period of ~~six months~~ thirty days.

16 Upon a second conviction or a second adjudication as a child in need of supervision for a
17 violation of § 35-9-2 while in a vehicle, the court shall suspend the driver license or driving
18 privilege of the driver, if the driver was under the age of twenty-one when the offense occurred,
19 for a period of one hundred eighty days.

20 Upon a ~~second~~ third or subsequent conviction or a ~~second~~ third or subsequent adjudication
21 as a child in need of supervision for a violation of § 35-9-2 while in a ~~motor~~ vehicle, the court
22 shall suspend the driver license or driving privilege of ~~any the driver of a vehicle who~~, if the
23 driver was under the age of twenty-one when the offense occurred, for a period of one year. For
24 any offense under this section, the court may issue an order, upon proof of financial

1 responsibility pursuant to § 32-35-113, permitting the person to operate a ~~motor~~ vehicle for
2 purposes of the person's employment, attendance at school, or attendance at counseling
3 programs.

4 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified
5 Judicial System shall notify the Department of Public Safety of any conviction or adjudication
6 for a violation, while in a ~~motor~~ vehicle, of § 35-9-2 or chapter 32-23. The period of suspension
7 ~~shall begin~~ begins on the date the person's suspended driver license is received by the court or
8 the Department of Public Safety. At the expiration of the period of suspension, a person may
9 make application to have the license reinstated and pay the license fee as prescribed in § 32-12-
10 47.1.

11 Section 56. That § 32-24-3 be amended to read as follows:

12 32-24-3. If a conviction for a violation of § 32-24-1 is for a second or subsequent offense
13 within a period of one year, such person is guilty of a Class 1 misdemeanor, and the court shall,
14 in pronouncing sentence, order that the defendant's driving privilege be ~~suspended~~ revoked for
15 thirty days. However, the court may ~~in its discretion~~ issue an order, upon proof of financial
16 responsibility pursuant to § 32-35-113, permitting the person to operate a ~~motor~~ vehicle for
17 purposes of the person's employment ~~during the hours of the day and the days of the week as~~
18 ~~set forth in the order,~~ attendance at school, or attendance at counseling programs. The court may
19 also order the revocation of the defendant's driving privilege for a further period not to exceed
20 one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

21 Section 57. That § 32-23-21 be amended to read as follows:

22 32-23-21. It is a Class 2 misdemeanor for any person under the age of twenty-one years to
23 drive, operate, or be in actual physical control of any ~~motor~~ vehicle:

24 (1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the

1 person's blood as shown by chemical analysis of the person's breath, blood, or other
2 bodily substance; or

3 (2) After having consumed marijuana or any controlled drug or substance for as long as
4 physical evidence of the consumption remains present in the person's body.

5 If a person is found guilty of or adjudicated for a violation of this section, the Unified
6 Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication,
7 the court shall suspend that person's driver's license or operating privilege for a period of ~~six~~
8 ~~months~~ thirty days for a first offense, one hundred eighty days for a second offense, or one year
9 for any ~~second~~ third or subsequent offense. However, the court may, ~~in its discretion~~ upon proof
10 of financial responsibility pursuant to § 32-35.43.1, issue an order permitting the person to
11 operate a ~~motor~~ vehicle ~~during the hours and days of the week set forth in the order~~ for purposes
12 of the person's employment, attendance at school, or attendance at ~~court-ordered~~ counseling
13 programs.

14 Section 58. That § 22-16-41 be amended to read as follows:

15 22-16-41. Any person who, while under the influence of an alcoholic beverage, any
16 controlled drug or substance, marijuana, or a combination thereof, without design to effect
17 death, operates or drives a ~~motor~~ vehicle of any kind in a negligent manner and thereby causes
18 the death of another person, including an unborn child, is guilty of vehicular homicide.
19 Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the
20 court may also order that the driver's license of any person convicted of vehicular homicide be
21 revoked for such period of time as may be determined by the court but in no case less than two
22 years.

23 Section 59. That § 22-34-29 be amended to read as follows:

24 22-34-29. In addition to any other penalty imposed by law, if any person is convicted of

violating, or any person under the age of eighteen is adjudicated to have violated, the provisions of § 22-34-1 or 22-34-27, and if the crime occurred while driving a ~~motor~~ vehicle or while being a passenger in a ~~motor~~ vehicle, the court shall order the driving privileges of such person suspended for:

~~(1) Thirty days, if the damage is two hundred dollars or less;~~

~~(2) Ninety days, if the damage is over two hundred dollars but less than one thousand dollars; and~~

~~(3) One one hundred eighty days, if the damage is one thousand dollars or more.~~

For the purposes of this section, all acts of vandalism that are part of a course of conduct shall be considered one violation for the purposes of determining damage. For the purposes of this section, all acts of vandalism that are part of a course of conduct involving driving a ~~motor~~ vehicle or being a passenger in a ~~motor~~ vehicle shall be deemed to have occurred while driving a ~~motor~~ vehicle or being a passenger in a ~~motor~~ vehicle.

Section 60. That § 32-12-15 be amended to read as follows:

32-12-15. The issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit is on a probationary basis. The Department of Public Safety upon the receipt of a record of conviction for a traffic violation or for a violation of the restrictions in § 32-12-11, 32-12-11.1, 32-12-12, 32-12-12.1, 32-12-13, or 32-12-14, committed prior to the minor's sixteenth birthday shall suspend ~~or revoke~~ the minor's driving privileges according to the following schedule:

(1) A felony or Class 1 misdemeanor traffic conviction--suspension until the minor's sixteenth birthday or as otherwise required by law;

(2) A first Class 2 misdemeanor traffic conviction--suspension for thirty days or as otherwise required by law;

- 1 (3) A first conviction of a violation of the conditions of an instruction permit, a
2 motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted
3 minor's permit--suspension for thirty days or as otherwise required by law;
- 4 (4) A second Class 2 misdemeanor traffic conviction--~~revocation~~suspension until the
5 minor's sixteenth birthday or for ninety days, whichever period is longer, or as
6 otherwise required by law; and
- 7 (5) A second conviction of a violation of the conditions of an instruction permit, a
8 motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted
9 minor's permit--~~revocation~~suspension until the minor's sixteenth birthday or for
10 ninety days, whichever period is longer, or as otherwise required by law.

11 No permit may be suspended for a first violation of § 32-14-9.1, 32-21-27, 32-25-5, 32-26-
12 20, or 34A-7-7, ~~or 32-26-20~~.

13 If a minor has no instruction permit, motorcycle instruction permit, restricted minor's permit,
14 or motorcycle restricted minor's permit and is convicted of any traffic violation prior to the
15 minor's sixteenth birthday, the department shall suspend or revoke the minor's driving privilege
16 or privilege to apply for a driver license as provided in this section. A conviction for any traffic
17 violation that occurs prior to the issuance of an instruction permit, motorcycle instruction
18 permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's
19 license or an operator's license shall be placed on the driving record and given the same
20 consideration as any violation that occurs following the issuance of an instruction permit,
21 motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit,
22 motorcycle operator's license, or an operator's license.

23 Section 61. That § 32-35-121 be repealed.

24 ~~— 32-35-121. The magistrate judge or circuit judge shall additionally suspend the driver's~~

~~license of any person convicted of a violation of § 32-35-113 or 32-35-120 for a period of not less than thirty days and not to exceed one year. Any drivers license surrendered to the court pursuant to this section shall be transmitted by the clerk of court together with the required report of the conviction, to the Department of Public Safety within ten days of the conviction.~~

Section 62. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

Any reference in this chapter to the weight of any controlled drug or substance includes the weight of any cutting or mixing agent.

Section 63. That § 22-42-2 be amended to read as follows:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense, a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. However, the distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony. ~~A first conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. However, a first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary of at least~~

1 ~~five years, which sentence may not be suspended. Probation, suspended imposition of sentence,~~
2 ~~or suspended execution of sentence may not form the basis for reducing the mandatory time of~~
3 ~~incarceration required by this section. A second or subsequent conviction for distribution to a~~
4 ~~minor under this section shall be punished by a mandatory sentence in the state penitentiary of~~
5 ~~at least fifteen years, which sentence may not be suspended. Probation, suspended imposition~~
6 ~~of sentence, or suspended execution of sentence, may not form the basis for reducing the~~
7 ~~mandatory time of incarceration required by this section. A civil penalty may be imposed, in In~~
8 ~~addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars,~~
9 ~~may be imposed upon a conviction of a violation of this section ~~not to exceed ten thousand~~~~
10 ~~dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is~~
11 ~~the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a~~
12 ~~finding of guilt by a jury or court.~~

13 Section 64. That § 22-42-2.3 be repealed.

14 ~~— 22-42-2.3. The sentencing court may impose a sentence other than that which is required by~~
15 ~~§ 22-42-2 if the court finds that mitigating circumstances exist which require a departure from~~
16 ~~the mandatory sentence imposed by § 22-42-2. The court's finding of mitigating circumstances~~
17 ~~allowed by this section and the factual basis relied upon by the court shall be in writing.~~

18 Section 65. That § 22-42-3 be amended to read as follows:

19 22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may
20 manufacture, distribute, or dispense a substance listed in Schedule III; possess with intent to
21 manufacture, distribute, or dispense, a substance listed in Schedule III; create or distribute a
22 counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit
23 substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the
24 distribution of a substance listed in Schedule III to a minor is a ~~Class 3~~ Class 4 felony. ~~A first~~

1 ~~conviction under this section shall be punished by a mandatory sentence in the state penitentiary~~
2 ~~or county jail of at least thirty days, which sentence may not be suspended. A second or~~
3 ~~subsequent conviction under this section shall be punished by a mandatory penitentiary or~~
4 ~~county jail sentence of at least one year, which sentence may not be suspended. However, a first~~
5 ~~conviction for distribution to a minor under this section shall be punished by a mandatory~~
6 ~~sentence in the state penitentiary or county jail of at least ninety days, which sentence may not~~
7 ~~be suspended. A second or subsequent conviction for distribution to a minor under this section~~
8 ~~shall be punished by a mandatory sentence in the state penitentiary of at least two years, which~~
9 ~~sentence may not be suspended. A civil penalty may be imposed, in In addition to any criminal~~
10 ~~penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a~~
11 ~~conviction of a violation of this section not to exceed ten thousand dollars.~~

12 Section 66. That § 22-42-4 be amended to read as follows:

13 22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may
14 manufacture, distribute, or dispense a substance listed in Schedule IV; possess with intent to
15 manufacture, distribute, or dispense, a substance listed in Schedule IV; create or distribute a
16 counterfeit substance listed in Schedule IV; or possess with intent to distribute a counterfeit
17 substance listed in Schedule IV. A violation of this section is a ~~Class 6~~ Class 5 felony. However,
18 the distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. ~~A first~~
19 ~~conviction under this section shall be punished by a mandatory sentence in the state penitentiary~~
20 ~~or county jail of at least thirty days, which sentence may not be suspended. A second or~~
21 ~~subsequent conviction under this section shall be punished by a mandatory penitentiary or~~
22 ~~county jail sentence of at least one year, which sentence may not be suspended. A civil penalty~~
23 ~~may be imposed, in In addition to any criminal penalty, a civil penalty, not to exceed one~~
24 ~~hundred thousand dollars, may be imposed upon a conviction of a violation of this section not~~

1 ~~to exceed ten thousand dollars. Notwithstanding any other provision of this section, a violation~~
2 ~~of this section with respect to distribution of Flunitrazepam to a minor is a Class 4 felony, but~~
3 ~~in all other cases under this section is a Class 5 felony.~~

4 Section 67. That § 22-42-5 be amended to read as follows:

5 22-42-5. No person may knowingly possess a controlled drug or substance listed in Schedule
6 I or II unless the substance was obtained directly or pursuant to a valid prescription or order
7 from a practitioner, while acting in the course of the practitioner's professional practice or
8 except as otherwise authorized by chapter 34-20B. A violation of this section is a Class 4 felony.

9 Section 68. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 No person may knowingly possess a controlled drug or substance listed in Schedule III or
12 IV unless the substance was obtained directly or pursuant to a valid prescription or order from
13 a practitioner, while acting in the course of the practitioner's professional practice or except as
14 otherwise authorized by chapter 34-20B. A violation of this section is a Class 6 felony.

15 Section 69. That § 22-42-6 be amended to read as follows:

16 22-42-6. No person may knowingly possess marijuana. It is a ~~Class 1~~ Class 2 misdemeanor
17 to possess ~~two ounces less than two grams~~ of marijuana ~~or less~~. It is a ~~Class 6 felony~~ Class 1
18 misdemeanor to possess ~~more than two ounces~~ two grams of marijuana but less than ~~one-half~~
19 ~~pound~~ two ounces of marijuana. It is a ~~Class 5~~ Class 6 felony to possess ~~one-half pound~~ two
20 ounces but less than one pound of marijuana. It is a ~~Class 4~~ Class 5 felony to possess one to ten
21 pounds of marijuana. It is a ~~Class 3~~ Class 4 felony to possess more than ten pounds of
22 marijuana. ~~A~~ In addition to any criminal penalty, a civil penalty, not to exceed one hundred
23 thousand dollars, may be imposed, ~~in addition to any criminal penalty,~~ upon a conviction of a
24 felony violation of this section ~~not to exceed ten thousand dollars.~~

Section 70. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of ~~one ounce~~ two ounces or less of marijuana is a Class 6 felony. However, the distribution of two ounces or less of marijuana to a minor for consideration is a Class 5 felony. The distribution, or possession with intent to distribute, of more than ~~one ounce but less than one-half pound~~ two ounces but less than one pound of marijuana is a Class 5 felony. However, the distribution of more than two ounces but less than one pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of ~~one-half pound but less than one pound~~ one pound to ten pounds, inclusive, of marijuana is a Class 4 felony. However, the distribution of one pound to ten pounds, inclusive, of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of ~~one pound or more~~ than ten pounds of marijuana is a Class 3 felony. However, the distribution of ~~any amount~~ more than ten pounds of marijuana to a minor is a ~~Class 4~~ Class 2 felony. ~~A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A~~ In addition to any criminal penalty, a civil penalty, not to exceed ~~ten~~ one hundred thousand dollars, may be imposed, ~~in addition to any criminal penalty,~~ upon a conviction of a felony violation of this section.

Section 71. That § 22-42-10 be amended to read as follows:

22-42-10. Any person who knowingly keeps or maintains a place which is resorted to by

persons using controlled drugs and substances for the purpose of using such substances, or which is used for the keeping or selling of such substances, is guilty of a Class 5 felony.

Section 72. That § 22-42-19 be amended to read as follows:

22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, or 22-42-4, or a felony violation of § 22-42-7 is guilty of a Class 4 felony, if such activity has taken place:

(1) In, on, or within one thousand feet of real property comprising a public or private elementary or secondary school or a playground; or

(2) In, on, or within ~~five~~ three hundred feet of real property comprising a public or private youth center, public swimming pool, or video arcade facility; ~~is guilty of a Class 4 felony~~. The sentence imposed for a conviction under this section carries a minimum sentence of imprisonment in the state penitentiary of five years. Any sentence imposed under this section shall be consecutive to any other sentence imposed for the principal felony. The court may not place on probation, suspend the execution of the sentence, or suspend the imposition of the sentence of any person convicted of a violation of this section. However, the sentencing court may impose a sentence other than that specified in this section if the court finds that mitigating circumstances exist which require a departure from the mandatory sentence provided for in this section. The court's finding of mitigating circumstances allowed by this section and the factual basis relied upon by the court shall be in writing.

It is not a defense to the provisions of this section that the defendant did not know the distance involved. It is not a defense to the provisions of this section that school was not in session.

Section 73. That § 22-42A-4 be amended to read as follows:

22-42A-4. No person, knowing the drug related nature of the object, may, for consideration,

1 deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia,
2 knowing, or under circumstances where one reasonably should know, that it will be used to
3 plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,
4 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise
5 introduce into the human body a controlled substance or marijuana in violation of this chapter.

6 Any person who violates any provision of this section is guilty of a Class 6 felony.

7 Section 74. That § 32-12-31 be amended to read as follows:

8 32-12-31. The Department of Public Safety ~~shall~~ may not issue any license under this
9 chapter to any person who is an habitual drunkard, or is an habitual user of narcotic drugs, or
10 is an habitual user of any other drug to a degree which renders ~~him~~ that person incapable of
11 safely driving a ~~motor~~ vehicle.

12 Section 75. That § 32-12-49.1 be amended to read as follows:

13 32-12-49.1. The following is a listing of moving traffic offenses and the number of points
14 assessed for a conviction for each offense:

- | | | |
|----|---|--------------|
| 15 | (1) Driving while intoxicated <u>under the influence</u> | ten points |
| 16 | (2) Reckless driving | eight points |
| 17 | (3) Eluding/attempting to elude a police officer | six points |
| 18 | (4) Drag racing | six points |
| 19 | (5) Failure to yield right-of-way | four points |
| 20 | (6) Improper passing | four points |
| 21 | (7) Driving on wrong side of roadway | four points |
| 22 | (8) Stop sign/light violation | three points |
| 23 | (9) Other moving offenses | two points |

24 For the purpose of this section, "other moving offenses" does not include speeding offenses.

1 Section 76. That § 1-1-11 be repealed.

2 ~~1-1-11. No armed body of police or detectives, or armed body of persons other than United~~
3 ~~States troops, shall be brought into this state for the suppression of violence, except upon the~~
4 ~~application of the Legislature if in session, or the Governor, if the Legislature is not in session.~~
5 ~~A violation of this section is a Class 6 felony.~~

6 Section 77. That § 2-4-6 be amended to read as follows:

7 2-4-6. Every person who intentionally ~~and~~, by force or fraud, prevents the Legislature of this
8 state or either of the branches composing it, or any of the members thereof, from meeting or
9 organizing, is guilty of a Class 4 felony.

10 Section 78. That § 2-4-8 be amended to read as follows:

11 2-4-8. Every person who intentionally ~~and~~, by force or fraud, compels or attempts to compel
12 the Legislature of this state, or either of the branches composing it, to adjourn or disperse, is
13 guilty of a Class 4 felony.

14 Section 79. That § 2-4-10 be amended to read as follows:

15 2-4-10. Every person who intentionally, by force or fraud, compels or attempts to compel
16 either branch of the Legislature of this state to pass, amend, or reject any bill or resolution, or
17 to grant or refuse any petition, or to perform or omit to perform any other official act, is guilty
18 of a Class 4 felony.

19 Section 80. That § 2-7-21 be amended to read as follows:

20 2-7-21. Any person who fraudulently alters a bill which has been passed by the Legislature
21 of this state, with intent to have it approved by the Governor, certified by the secretary of state,
22 or printed or published by the printer of the statutes, in language different from that in which
23 it was passed by the Legislature, is guilty of a Class 6 felony.

24 Section 81. That § 23A-28B-35 be amended to read as follows:

23A-28B-35. No person may submit a fraudulent application or claim for a victims' compensation award, may intentionally make or cause to be made any false statement or representation of a material fact in a claim, or may intentionally conceal or fail to disclose information affecting the amount of or the initial or continued right to any such claim or award when reasonably requested to provide such information by the department or the commission.

Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor if the application or claim is in an amount of ~~five hundred~~ one thousand dollars or less. Any person who violates the provisions of this section is guilty of a Class 4 felony if the application or claim is in an amount exceeding ~~five hundred~~ one thousand dollars.

Any person who violates the provisions of this section forfeits any benefit received under this chapter and shall reimburse the state for any such payments received or paid to or on behalf of that person.

The state has a civil cause of action for relief against any person who violates this section in the amount of damages which the state has sustained as a result of such violation and, in addition, for punitive damages in an amount not more than double the amount of damages which the state has sustained, together with interest, plus the cost of such suit.

Section 82. That § 24-11-48 be amended to read as follows:

24-11-48. No employee or other person may deliver or procure to be delivered, or have in such person's possession with intent to deliver, to any person incarcerated in a jail or a juvenile detention facility, or deposit or conceal in or around any jail or in or around a juvenile detention facility, or in any mode of transport entering the grounds of any jail or juvenile detention facility and its ancillary facilities used to house inmates or juveniles, any article or thing ~~contrary~~ prohibited pursuant to § 24-11-47 with intent that any inmate obtain or receive the same. A violation of this section is a Class 6 felony.

1 Section 83. The code counsel shall transfer § 25-5A-7.1 to a newly created chapter in Title
2 22 entitled "Offenses Against the Family" and shall renumber the section accordingly and adjust
3 all appropriate cross references.

4 Section 84. That § 25-7-15 be amended to read as follows:

5 25-7-15. The parent of any child under the age of ~~six~~ ten years and any person to whom any
6 such child has been confided for nurture or education who deserts such child in any place
7 ~~whatever~~ with intent to wholly ~~to~~ abandon it the child, is guilty of a ~~Class 6~~ Class 4 felony.

8 Section 85. That § 25-10-13 be amended to read as follows:

9 25-10-13. If a temporary protection order or a protection order is granted pursuant to this
10 chapter or is a foreign domestic violence protection order pursuant to § 25-10-12.1, and the
11 respondent or person to be restrained knows of the order, violation of the order is a Class 1
12 misdemeanor. If any violation of this section constitutes an assault pursuant to ~~§ 22-18-1.1~~ § 22-
13 18-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been
14 convicted of, or entered a plea of guilty to, two or more violations of this section, the factual
15 basis for which occurred after the date of the second conviction, and occurred within five years
16 of committing the current offense, the respondent or person to be restrained is guilty of a Class
17 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition
18 to other civil or criminal remedies.

19 Section 86. That § 31-28-23 be amended to read as follows:

20 31-28-23. No person may, without lawful authority, attempt or actually alter, deface, injure,
21 knock down, remove, or in any manner molest or interfere with any official highway marker,
22 sign, guide board, traffic-control device, snowgate, or any railroad sign or signal, barrier,
23 warning device, or sign erected in connection with highway maintenance or construction
24 activities. A violation of this section is a Class 1 misdemeanor. Any person who violates this

1 section is responsible for the cost of repairing or replacing such markers, signs, signals, barriers,
2 or devices.

3 Section 87. That § 32-33-18 be amended to read as follows:

4 32-33-18. Any driver of a ~~motor~~ vehicle who intentionally fails or refuses to bring a vehicle
5 to a stop, ~~or who otherwise flees or attempts to elude a pursuing law enforcement vehicle,~~ when
6 given visual or audible signal to bring the vehicle to a stop, is guilty of ~~eluding~~ failure to stop
7 at the signal of a law enforcement officer. The signal given by the law enforcement officer may
8 be by hand, voice, emergency light, or siren. The officer giving the signal shall be in uniform,
9 prominently displaying a badge of office, and the vehicle shall be appropriately marked showing
10 it to be an official law enforcement vehicle.

11 ~~Eluding~~ Failure to stop at the signal of a law enforcement officer is a ~~Class 4~~ Class 2
12 misdemeanor. In addition, the court ~~shall~~ may order that the defendant's driver's license be
13 revoked for up to one year, but may issue an order, upon proof of financial responsibility
14 pursuant to § 32-35-113, allowing the defendant to operate a ~~motor~~ vehicle for purposes of the
15 defendant's employment, attendance at school, or counseling programs. ~~Any person who is~~
16 ~~found guilty of eluding is subject to the additional enhanced penalties if the course of eluding~~
17 ~~results in:~~

- 18 ~~— (1) — Death or great bodily injury to another person, a Class 4 felony; and~~
19 ~~— (2) — Substantial bodily injury to another person or property damage in excess of five~~
20 ~~hundred dollars to property belonging to a person other than the person eluding, a~~
21 ~~Class 6 felony.~~

22 ~~— For any subsequent violation, the court shall order that the defendant's driver's license be~~
23 ~~revoked for five years.~~

24 Section 88. That chapter 32-33 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any driver of a vehicle who, after failing or refusing to bring a vehicle to a stop pursuant
3 to § 32-33-18, flees from the law enforcement officer or attempts to elude the pursuit of the law
4 enforcement officer is guilty of eluding. Eluding is a Class 1 misdemeanor. In addition, the court
5 may order that the defendant's driver's license be revoked for up to one year, but may issue an
6 order, upon proof of financial responsibility pursuant to § 32-35-113, allowing the defendant
7 to operate a vehicle for purposes of the defendant's employment, attendance at school, or
8 counseling programs.

9 Section 89. That chapter 32-33 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Any driver of a vehicle who flees from a law enforcement officer or attempts to elude the
12 pursuit of a law enforcement officer is guilty of aggravated eluding if, at any time during the
13 flight or pursuit, the driver operates the vehicle in a manner that constitutes an inherent risk of
14 death or serious bodily injury to any person. Any of the following constitutes an inherent risk
15 of death or serious bodily injury to any person, while fleeing from a law enforcement officer or
16 attempting to elude the pursuit of a law enforcement officer:

- 17 (1) Death or serious bodily injury to any person; or
- 18 (2) Property damage in the aggregate of two thousand or more dollars; or
- 19 (3) Exceeding, at any time during the flight or pursuit, any posted speed limit by twenty
20 or more miles per hour; or
- 21 (4) Exceeding, at any time during the flight or pursuit, any posted speed limit through a
22 school zone or a construction zone by ten or more miles per hour; or
- 23 (5) Failure to surrender to authority within ten minutes of the initiation of the flight or
24 attempted elusion; or

(6) Failure to surrender to authority prior to traveling five miles in the course of the flight or attempted elusion.

Aggravated eluding is a Class 5 felony. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-113, allowing the defendant to operate a vehicle for purposes of the defendant's employment, attendance at school, or counseling programs. For any subsequent aggravated eluding violation, the court shall order that the defendant's driver's license be revoked for five years.

Section 90. That § 33-12-23 be amended to read as follows:

33-12-23. ~~Every~~ Any person who enters any fort, magazine, arsenal, armory, arsenal yard, or encampment, and seizes or takes away any arms, ammunition, military stores, or supplies belonging to the people of this state, and every person who enters any such place with intent to do so, is guilty of a ~~Class 4~~ Class 2 felony.

Section 91. That § 34-16-2 be amended to read as follows:

34-16-2. ~~Every~~ Any person who releases or spreads any disease germs intending thereby to accomplish the infection of one or more persons or domestic animals is guilty of a ~~Class 4~~ Class 2 felony.

Section 92. That § 37-17-1 be amended to read as follows:

37-17-1. Any person who knowingly sells or offers for sale any agricultural implement, farm tractor, or other type of farm machinery or equipment, or radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe, vacuum cleaner, dictating machine, tape recorder, watch, watch movement, watch case, or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or equipment, which is identified by a serial number placed thereon by the manufacturer, the

original serial number of which has been destroyed, removed, altered, covered, or defaced, is guilty of a Class 2 misdemeanor if the value of the property is ~~two~~ four hundred dollars or less.

If the value of the property is more than ~~two~~ four hundred dollars and less than one thousand dollars, such person is guilty of a Class 1 misdemeanor. If the value of the property is one thousand dollars or greater, such person is guilty of a Class 4 felony.

Section 93. That § 40-15-39 be amended to read as follows:

40-15-39. Any person who purchases livestock from a livestock auction agency, as defined in this chapter, with intent to defraud is guilty of livestock fraud. The failure of such purchaser to tender payment in full within four days of the date of purchase, is prima facie evidence of intent to defraud.

Livestock fraud is a Class 4 felony.

Section 94. That § 40-38-4 be amended to read as follows:

40-38-4. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a ~~Class 6 felony~~ Class 2 misdemeanor if there is damage of ~~at least five~~ four hundred dollars ~~and a Class 1 misdemeanor or less. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class~~ 1 misdemeanor if there is damage of an amount greater than four hundred dollars and less than one thousand dollars. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class 4 felony if there is damage of less than five hundred dollars one thousand dollars or greater. Any person who violates subdivisions 40-38-2(2) to (5), inclusive, is guilty of a ~~Class 6~~ Class 4 felony.

Section 95. That § 47-31B-508 be amended to read as follows:

47-31B-508. (a) Criminal penalties. It is a ~~class four~~ Class 4 felony for any person that willfully violates this chapter, or a rule adopted or order issued under this chapter, except § 47-31B-504 or the notice filing requirements of § 47-31B-302 or 47-31B-405, or that willfully

1 violates § 47-31B-505 knowing the statement made to be false or misleading in a material
2 respect, ~~upon conviction, shall be fined not more than ten thousand dollars per violation. An~~
3 ~~individual convicted of violating a rule or order under this chapter may be fined, but may not~~
4 ~~be imprisoned, if the individual did not have knowledge of the rule or order. A subsequent~~
5 violation is a Class 3 felony.

6 ~~—(b) Criminal reference not required. The Attorney General or the proper prosecuting attorney~~
7 ~~with or without a reference from the director, may institute criminal proceedings under this~~
8 ~~chapter.~~

9 ~~—(c) No limitation on other criminal enforcement. This chapter does not limit the power of~~
10 ~~this state to punish a person for conduct that constitutes a crime under other laws of this state.~~

11 Section 96. That § 51A-1-10 be amended to read as follows:

12 51A-1-10. It is a Class 4 felony for an officer, director, employee, or agent of a bank:

13 (1) With intent to deceive, to make any false or misleading statement or entry or omit
14 any statement or entry that should be in any book, account, report, or statement of the
15 bank; or

16 (2) To obstruct or endeavor to obstruct a lawful examination of the bank by an officer
17 or employee of the division.

18 Section 97. That § 52-1-12 be amended to read as follows:

19 52-1-12. It is a Class 4 felony for an officer, director, employee or agent of an association:

20 (1) With intent to deceive, to make a false or misleading statement or entry or to omit
21 any statement or entry that should be made in a book, account report or statement of
22 the association; or

23 (2) To obstruct a lawful examination of the association by an officer or employee of the
24 Division of Banking.

Section 98. That § 58-4A-2 be amended to read as follows:

58-4A-2. For purposes of this chapter, a person commits a fraudulent insurance act if the person:

- (1) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
- (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives money for the purpose of purchasing insurance and converts the money to the person's own benefit or for a purpose not intended or authorized by an insured or prospective insured;
- (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance or of an insured or prospective insured;
- (4) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Division of Insurance;
- (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or other person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or other person engaged in the business of insurance;
- (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any insurance producer of an insurer, any statement as part of a claim, in support of a claim, or in denial of a claim for payment or other benefit pursuant to an insurance

policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(7) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit, or denial, pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim; or

(8) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer.

Any violation of this section for an amount of ~~five~~ four hundred dollars or less is a ~~Class 1~~ Class 2 misdemeanor. Any violation of this section for an amount in excess of ~~five~~ four hundred dollars and less than one thousand dollars is a Class 1 misdemeanor. Any violation of this section for an amount of one thousand dollars and greater is a Class 4 felony. Any other violation of this section is a Class 1 misdemeanor.

Section 99. That § 58-33-37 be amended to read as follows:

58-33-37. Any person who knowingly makes any false or fraudulent statement or representation with reference to any application for insurance is guilty of a Class 1 misdemeanor. Any person who knowingly presents or causes to be presented a false or fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof in support of such a claim for the payment of a loss upon a contract of insurance, or who prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a ~~Class 1~~ Class 2 misdemeanor if such claim is for an amount of ~~five~~

1 four hundred dollars or less; a Class 1 misdemeanor if such claim is for an amount greater than
2 four hundred dollars and less than one thousand dollars; and is guilty of a Class 4 felony if such
3 claim exceeds five hundred is one thousand dollars or greater.

4 Section 100. That chapter 32-23 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 No person may ride a horse or any other animal while under the influence of an alcoholic
7 beverage, marijuana, or any controlled drug or substance, or any combination of an alcoholic
8 beverage, marijuana, or such controlled drug or substance. If, by so doing, the person poses a
9 serious hazard to public safety, the person is guilty of a Class 1 misdemeanor.

10 Section 101. That chapter 32-23 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 No person may ride a bicycle or any other nonmotorized vehicle while under the influence
13 of an alcoholic beverage, marijuana, or any controlled drug or substance, or any combination
14 of an alcoholic beverage, marijuana, or such controlled drug or substance. If, by so doing, the
15 person poses a serious hazard to public safety, the person is guilty of a Class 1 misdemeanor.

16 Section 102. That chapter 32-23 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 For purposes of this chapter, the term, vehicle, as defined in subdivision 32-14-1(37) does
19 not include bicycles, any other nonmotorized vehicles, and ridden animals.

20 Section 103. The provisions of this Act are effective on July 1, 2006.

21 Section 104. That chapter 22-42 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 A first conviction under § 22-42-2 shall be punished by a mandatory sentence in the state
24 penitentiary of at least one year, which sentence may not be suspended. Probation, suspended

1 imposition of sentence, or suspended execution of sentence may not form the basis for reducing
2 the mandatory time of incarceration required by this section. A second or subsequent conviction
3 under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least
4 five years, which sentence may not be suspended. Probation, suspended imposition of sentence,
5 or suspended execution of sentence may not form the basis for reducing the mandatory time of
6 incarceration required by this section. However, a first conviction for distribution to a minor
7 under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least
8 five years, which sentence may not be suspended. Probation, suspended imposition of sentence,
9 or suspended execution of sentence may not form the basis for reducing the mandatory time of
10 incarceration required by this section. A second or subsequent conviction for distribution to a
11 minor shall be punished by a mandatory sentence in the state penitentiary of at least fifteen
12 years, which sentence may not be suspended. Probation, suspended imposition of sentence, or
13 suspended execution of sentence may not form the basis for reducing the mandatory time of
14 incarceration required by this section. A conviction for the purposes of the mandatory sentence
15 provisions of this chapter is the acceptance by a court of any plea, other than not guilty ,
16 including nolo contendere, or a finding of guilt by a jury or court.

17 The sentencing court may impose a sentence other than that which is required by this section
18 if the court finds that the defendant provided timely and effective cooperation to law
19 enforcement. The factual basis finding timely and effective cooperation with law enforcement
20 must be made in writing.

21 Section 105. That chapter 22-42 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 A conviction under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence in the
24 state penitentiary or county jail of at least thirty days, which sentence may not be suspended.

1 Probation, suspended imposition of sentence, or suspended execution of sentence may not form
2 the basis for reducing the mandatory time of incarceration required by this section. A second or
3 subsequent conviction under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence
4 in the state penitentiary or county jail of at least one year, which sentence may not be suspended.

5 Probation, suspended imposition of sentence, or suspended execution of sentence may not form
6 the basis for reducing the mandatory time of incarceration required by this section. However,
7 a first conviction for distribution to a minor under § 22-42-3 or 22-42-4 shall be punished by
8 a mandatory sentence in the state penitentiary of at least ninety days, which sentence may not
9 be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence
10 may not form the basis for reducing the mandatory time of incarceration required by this section.

11 A second or subsequent conviction for distribution to a minor shall be punished by a mandatory
12 sentence in the state penitentiary of at least two years, which sentence may not be suspended.

13 Probation, suspended imposition of sentence, or suspended execution of sentence may not form
14 the basis for reducing the mandatory time of incarceration required by this section.

15 A conviction for the purposes of the mandatory sentence provisions of this chapter is the
16 acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding
17 of guilt by a jury or court.

18 The sentencing court may impose a sentence other than that which is required by this section
19 if the court finds that the defendant provided timely and effective cooperation to law
20 enforcement. The factual basis finding timely and effective cooperation with law enforcement
21 must be made in writing.